IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 13767 of 2003
with
CIVIL APPLICATION No.6659 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SATUBHA KANUBHA VAGHELA

Versus

STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 13767 of 2003
MR SATYEN B RAWAL for Petitioner No. 1
MR DIPEN DESAI, Ld. AGP for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE JAYANT PATEL

Date of decision: 06/11/2003

ORAL JUDGEMENT

1. When the main matter is taken up for final

hearing, after hearing the learned Counsel for both the sides, it has come on record that the election is already held. However, Mr.Rawal, learned Counsel for the petitioner, submitted that the present case is falling in the exceptional category in as much as the Bank had no cause to get itself impleaded as party and the election, because of the illegal action on the part of the election authority, has resulted into uncontested and he submitted that even otherwise also the conduct of the Bank and the election Officer has also resulted into such illegality. He submitted that this being the extraordinary case, the Court now may not relegate the petitioner to remedy of the election petition.

2. In this matter, this Court on 19-9-2003, had entertained the petition at a stage when the election was yet to be held and had also passed the interim order. It has been reported by the learned Counsel appearing for the parties that the matter was carried into LPA and the Division Bench has admitted the LPA and has stayed the order and as a result thereof, the interim order passed on 19-9-2003 has not come into operations. Further, pending the aforesaid litigation, the election is already held. Once the election is already held and since by virtue of the interim order passed by this Court, no further action is taken, I am of the view that the petitioner should now prefer the election petition and resort to the remedy available under Section 145U of the Gujarat Coop. Societies Act.

3. Hence, this petition is not entertained now in view of the subsequent circumstances that the election is already held and it would be open to the petitioner to prefer election petition on the grounds which are mentioned in this petition. It is also clarified that if the election petition is preferred by the petitioner, the competent Tribunal shall be at liberty to take independent view of the matter, without being, in any manner, influenced by any of the observations made by this Court in the interim order or any other litigation arising therefrom.

4. Subject to the aforesaid observations and clarifications, the petition is not entertained further and hence rejected. Rule discharged.

5. In view of the order passed in the main SCA, no orders in Civil Application and hence disposed of accordingly.

6-11-2003 (Jayant Patel, J.)

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